IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3980 OF 2005

Deepak Pandurang Walekar ...Applicant

vs.

State of Maharashtra ...Respondent

Mr.Kiran Makasare for the Applicant
Ms Gadhvi,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 29,2005.

P.C.:

1. Heard learned Counsel for the Applicant and the learned A.P.P. for State. This application is for grant of anticipatory bail. The offence alleged against the Applicant and co-accused are under Sections 144, 146, 147, 148, 149, 323, 471, 452 read with Section 506 (ii) of the Indian Penal Code.

2. The learned Counsel for the Applicant submitted that there is a gross delay of 24 hours in lodging the F.I.R. He placed reliance on the documents annexed to this Application by contending that from 10th May 2005 to 25th May 2005 the Applicant was away from Mumbai. He submitted that it is impossible to believe that in the afternoon 8 to 10 persons came to the spot with choppers in their hands. He submitted that on the basis of condition imposed by the learned Sessions Judge while granting ad-interim bail, the Applicant has attended the Police Station on number of days and therefore

the custodial interrogation is now no longer required.

3. The learned A.P.P. submitted that the Applicant has criminal antecedents and number of cases are pending against him. The learned A.P.P. submitted that considering the serious allegations against the Applicant, custodial interrogation is mandatory. The learned Counsel for the Applicant pointed out that out of 16 cases on which reliance is placed by the learned A.P.P., the Applicant has been acquitted in at least 8 cases and the remaining cases are involving very minor offences.

4. The allegation against the Applicant is that he came along with 8 to 10 persons and he was carrying a weapon like sword. The allegation is that the Applicant and others assaulted one Baban by fist blows and kicks and threatened the son of the first informant by showing him the weapon.

5. The Apex Court in a recent Judgment reported in (2003) 8 S.C.C. page no.77 (Bharat Chaudhary & another vs. State of Bihar and another) held that the gravity of offence and the need for custodial interrogation are the only factors which are required to be considered while deciding an application for granting anticipatory bail. In the present case, it cannot be disputed that the allegations against the Applicant are grave in nature. Though the Applicant might have been acquitted in some of the cases, the fact remains that the

Applicant has criminal antecedents. The Apex Court in another decision held that that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is armed with an order under Section 438 of the Code of Criminal Procedure, 1973.

6. In my view, considering the gravity of allegations this is a case where custodial interrogation of the Applicant is required. Hence, Application is rejected.

7. At this stage, the learned Counsel for the Applicant prays for time of seven days to surrender. Considering the nature of the allegations against the Applicant, the said request cannot be considered and the same is rejected.

JUDGE